



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF COMM SOUTH)
COMPANIES, INC. FOR AUTHORITY TO OPERATE)
AS A FACILITIES-BASED PROVIDER OF)
TELECOMMUNICATIONS SERVICES IN THE STATE)
OF NEW JERSEY)

ORDER

DOCKET NO. TE02090699

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N. J. S. A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated September 27, 2002, Comm South Companies, Inc. ("Petitioner" or "Comm South") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to operate as a facilities-based provider of telecommunications services in the State of New Jersey.

Comm South Companies, Inc. is a privately held corporation initially incorporated as Onyx Distributing Company, Inc. ("Onyx") under the laws of the State of Texas. Later, Onyx filed a Certificate of Amendment to change its corporate legal name to Comm South Companies, Inc. Georgia Comm South, Inc., E-Z Tel, Inc. and Comm South Companies of Virginia, Inc. are wholly owned subsidiaries of Comm South. Petitioner's principal offices are located at 6830 Walling Lane, Dallas, Texas 75231.

Petitioner has submitted copies of its Amended Certificate of Incorporation, Certificate of Good Standing and a certified copy of its Articles of Incorporation, all from the State of Texas. The Petitioner has also submitted a copy of its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, Comm South was formed to operate as a competitive facilities-based carrier to provide telecommunications services throughout New Jersey. Petitioner states that it is currently authorized to provide facilities-based and/or resold local telecommunications services in Alabama, Arizona, Arkansas, California, Colorado, Delaware, the District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Washington, West Virginia and Wyoming. Additionally, through its wholly owned subsidiaries, the Petitioner is authorized to provide facilities-based and/or resold local exchange telecommunications services in Georgia, North and South Carolina and Virginia. Petitioner states that it has not been denied authority to provide telecommunications services in any state.

According to the Petition, in 2000, Comm South's authority to provide telecommunications services was revoked in the states of Alabama, Arkansas and Florida due to the Petitioner's inadvertent failure to file reporting information in a timely manner. Petitioner believes that the oversights were attributable in large measure to changes in responsible personnel and a move of the Company's headquarters in March and April of that year. The Petitioner indicates it has been reinstated in each of the aforementioned states. The Petitioner states it has not had any civil or criminal proceedings brought against it, or settled any such proceedings, in any jurisdiction. According to the Petition, Comm South has never filed for bankruptcy nor has it been the subject of any state or federal investigation. The Petitioner states it has a Board approved interconnection agreement with Verizon – New Jersey and a pending interconnection and resale agreement with United Telephone Company of New Jersey that is currently before the Board under Docket No. TO03020137.

In its Petition, the Company seeks authority to provide facilities-based competitive resold local exchange telecommunications services to residential customers throughout the state of New Jersey. Petitioner states that it plans to provide flat-rated local exchange services including optional calling features. Petitioner proposes to provide these services by purchasing from Verizon – New Jersey wholesale telecommunications services and unbundled network elements, particularly the unbundled network elements platform, pursuant to applicable federal and state requirements. Petitioner initially intends to provide local service in those areas currently served by Verizon. Petitioner states that where facilities permit, service will be available on a full-time basis, twenty-four hours per day, seven days per week. At present, Petitioner does not offer long-distance services to consumers but it may do so in future. Petitioner further states that currently it has no plans to build, acquire, or install equipment or facilities in New Jersey. According to the Petition, Comm South began operations in Texas in February of 1996 and has since grown to serve over 30,000 customers in 38 states. Petitioner plans to expand its services throughout the eastern United States and intends to become a leading provider of telecommunications services in this region. Petitioner states that prior to commencement of service, Comm South will file a tariff for Board's approval.

Petitioner requests a waiver of N. J. S. A. 48:3-7.8 and N. J. A. C. 14:1-4.3 which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Dallas, Texas. Petitioner also states, upon written notice from the Board, it will provide its books and records at such time and place within New Jersey, as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Comm South states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to Comm South, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

Petitioner states it is a privately held corporation and has filed most recent financial statement to substantiate that the Comm South has financial capability to provide the above described services.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N. J. S. A. 48:2-21.16(a)(4); N. J. S. A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Comm South's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner has demonstrated it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to operate as a facilities-based provider of telecommunications services throughout New Jersey subject to approval of its tariff. The Board also FINDS that in accordance with N. J. S. A. 48:2-59 and 48:2-60 and N. J. S. A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N. J. S. A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N. J. S. A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's

financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 4/11/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PETITION OF COMM SOUTH COMPANIES, INC.
FOR AUTHORITY TO OPERATE AS A FACILITIES-BASED PROVIDER OF
TELECOMMUNICATIONS SERVICES IN THE STATE OF NEW JERSEY

DOCKET NO. TE02090699

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